

**TTAB**

Docket No. 30GL-192270

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

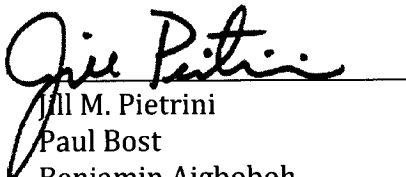
<i>In re Matter of Application Serial No. 85/587,640 for the trademark <b>HINT</b> in Class 18</i>  Hint, Incorporated,  Opposer,  v.  Sunrise Apparel Group, LLC,  Applicant.	Opposition No. 91-212519  <b>MOTION TO AMEND APPLICATION AND ANSWER TO NOTICE OF OPPOSITION</b>
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Commissioner of Trademarks  
Box TTAB – NO FEE  
P.O. Box 1451  
Alexandria, VA 22313-1451

Pursuant to TBMP § 507.01 and Fed. R. Civ. P. 15(a), Applicant Sunrise Apparel Group, LLC ("Applicant") hereby moves for leave to amend the above-identified application and its Answer to the Notice of Opposition filed on October 28, 2013. This motion is supported by the accompanying brief, and such other papers and argument as may be presented to the Board.

Respectfully submitted,

Dated: November 15, 2013

  
Jill M. Pietrini  
Paul Bost  
Benjamin Aigboboh  
SHEPPARD MULLIN RICHTER & HAMPTON LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, California 90067-6017  
(310) 228-3700



\*11-18-2013\*

## **BRIEF IN SUPPORT OF MOTION**

### **I. FACTUAL BACKGROUND**

On September 16, 2013, Opposer Hint, Incorporated filed (“Opposer”) a Notice of Opposition against Applicant’s application Serial No. 85/587,640 to register the mark HINT in Class 18 for “Handbags; wallets; key chains of leather or imitation leather”.

On October 28, 2013, Applicant filed its Answer to the Notice of Opposition, identifying seven affirmative defenses.

Applicant now wishes to amend its application to restrict the identification of goods, by inserting the following limitation, as indicated in bold underline:

Handbags; wallets; key chains of leather or imitation leather,  
**sold through the retail outlet Vanity**

Applicant concurrently wishes to amend its Answer to the Notice of Opposition to assert an eighth affirmative defense, namely, the restriction of the identification of goods.

### **II. THE MOTION TO AMEND SHOULD BE GRANTED**

#### **A. The Board Should Grant Applicant's Leave to Amend the Application**

The amendment of any application which is the subject of an *inter partes* proceedings before the Board is governed by the TRADEMARK RULES OF PRACTICE § 2.133. TBMP §514.01. An application may not be amended in substance, except with the consent of the other party and the approval of the Board, or exception upon motion granted by the Board. *Id.*

If the motion is made without the consent of the other party, it should ordinarily be made prior to trial, to give the other party fair notice thereof. TBMP §514.03. The proposed amendment must also comply with all other applicable rules and statutory provisions, namely, impermissible amendments such as a material alteration of the mark will not be granted. *Id.*

“However, if the proposed amendment limits the identification of goods or services and the applicant consents to the entry of judgment on the question of, for example, a

likelihood of confusion with the goods or services to be deleted, it may be approved, even where an opposer objects.” TBMP §514.01; *Drive Trademark Holdings LLC v. Inofin*, 83 USPQ.2d 1433, 1435-36 (TTAB 2007). The Board generally will defer determination until final decision or until the case is decided by summary judgment. TBMP §514.03. If the Board ultimately finds that an applicant is not entitled to registration in the absence of a restriction, the proposed restriction will be approved and entered, but if the Board finds that an applicant is entitled to registration even without the proposed restriction, the applicant will be allowed time to indicate whether it still wishes to have the restriction entered. *Id.*

The Board should approve amendment of Applicant’s application because the proposed amendment limits the identification of goods, and thus further avoids any alleged likelihood of confusion with Opposer’s mark, as well as narrowing the scope of the issues for the Board to decide in the present proceeding. Opposer is not prejudiced by the proposed amendment, because Applicant’s motion is timely brought and well before the start of discovery, much less trial. Finally, Applicant consents to an entry of judgment with respect to the broader identification of goods, reserving the right to keep the original identification should the Board find that Applicant is entitled to registration without the proposed amendment.

**B. The Board Should Grant Applicant’s Leave to Amend the Answer to the Notice of Opposition**

Amendments to pleadings in *inter partes* proceedings before the Board are governed by the FEDERAL RULES OF CIVIL PROCEDURE. TBMP § 507.01 (“[P]leadings in an inter partes proceeding before the Board may be amended in the same manner and to the same extent as in a civil action in a United States district court.”). Rule 15(a)(1) of the FEDERAL RULES OF CIVIL PROCEDURE provides that “A party may amend its pleading once as a matter of course within 21 days after serving it.” Fed. R. Civ. P. 15(a)(1)(A); TBMP § 507.01. Furthermore, the Board liberally grants leave to amend pleadings “at any stage of the

proceeding where necessary to bring about a furtherance of justice unless it is shown that entry of the amendment would violate settled law or be prejudicial to the rights of the opposing party." *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503, 1505 (TTAB 1993) (quoting *American Optical Corp. v. American Olean Tile Co., Inc.*, 168 USPQ 471, 473 (TTAB 1971)).

Importantly, Applicant need not prove its case on this motion to amend nor prove a likelihood of success on the merits. Rather, Applicant must merely satisfy the liberal pleading standards of the Federal Rules of Civil Procedure and those of the Board. Applicant has made that showing.

Applicant has the right to amend its Answer to the Notice of Opposition once as a matter of course and hereby exercises such right. Attached hereto as **Exhibit A** is a true and correct clean version of the Amended Answer to the Notice of Opposition. Attached hereto as **Exhibit B** is a true and correct redlined version showing the changes between the original Answer and the Amended Answer.

### III. CONCLUSION

Based on the foregoing, Applicant respectfully requests that the Board enter an order granting Applicant leave to amend its application to amend the identification of goods and for Applicant leave to file its proposed amended Answer. Applicant further requests that the Board deem that Applicant's Amended Answer filed and served.

Respectfully submitted,

Dated: November 15, 2013

  
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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, Attn: Trademark Trial and Appeals Board P.O. Box 1451, Alexandria, VA 22313-1451, on this 15th day of November, 2013.

  
Larina A. Martin

**CERTIFICATE OF SERVICE**

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Lori S. Kozak  
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP  
12400 Wilshire Blvd., 7th Floor  
Los Angeles, CA 90025-1040

on this 15th day of November, 2013.

  
Larina A. Martin

SMRH:412845810.1

# EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<i>In re Matter of Application Serial No. 85/587,640 for the trademark <b>HINT</b> in Class 18</i>  Hint, Incorporated,  Opposer,  v.  Sunrise Apparel Group, LLC,  Applicant.	Opposition No. 91-212519  <b>AMENDED ANSWER TO NOTICE OF OPPOSITION</b>
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Applicant Sunrise Apparel Group, LLC, ("Applicant"), by and through its counsel, responds to the Notice of Opposition ("Opposition") filed by Opposer Hint, Incorporated ("Opposer") as follows:

In response to the preliminary paragraph of the Opposition, Applicant admits that it filed Application Serial No. 85/587,640 for the trademark HINT in Class 18, but denies that Opposer will be damaged by the application or its registration. Applicant lacks sufficient information or belief to admit or deny any remaining allegations contained in the preliminary paragraph of the Opposition, and therefore denies each and every such allegation.

1. Applicant admits that the allegations contained in paragraph 1 of the Opposition.
2. In response to paragraph 2 of the Opposition, Applicant admits only that it filed Application Serial No. 85/587,640 for the goods stated therein. Applicant denies each and every remaining allegation therein.
3. Applicant admits that the allegations contained in paragraph 3 of the Opposition.

4. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 4 of the Opposition, and therefore denies each and every such allegation.

5. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 5 of the Opposition, and therefore denies each and every such allegation.

6. Applicant denies the allegations contained in paragraph 6 of the Opposition.

7. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 7 of the Opposition, and therefore denies each and every such allegation.

8. Applicant admits that it filed its Application, Serial No. 85/587,640 on April 3, 2012 based on an intent to use the mark, but denies the remaining allegations contained in paragraph 8 of the Opposition.

9. Applicant denies the allegations contained in paragraph 9 of the Opposition.

10. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 10 of the Opposition, and therefore denies each and every such allegation.

11. Applicant denies the allegations contained in paragraph 11 of the Opposition.

12. Applicant lacks sufficient information or belief to admit or deny the allegations contained in paragraph 12 of the Opposition, and therefore denies each and every such allegation.

13. Applicant denies the allegations contained in paragraph 13 of the Opposition.

14. Applicant denies the allegations contained in paragraph 14 of the Opposition.

15. Applicant denies the allegations contained in paragraph 15 of the Opposition.

16. Applicant denies the allegations contained in paragraph 16 of the Opposition.



17. Applicant states that the allegations in the last unnumbered paragraph of the Opposition state a legal conclusion to which no response is required and therefore denies each and every such allegation.

**AFFIRMATIVE DEFENSES**

***First Affirmative Defense – Failure To State A Claim***

18. Opposer has failed to allege grounds sufficient to sustain the Opposition.

***Second Affirmative Defense – Estoppel***

19. The Opposition is barred by estoppel.

***Third Affirmative Defense – Acquiescence***

20. The Opposition is barred by Opposer's acquiescence.

***Fourth Affirmative Defense – Waiver***

21. The Opposition is barred by the doctrine of waiver.

***Fifth Affirmative Defense – Laches***

22. The Opposition is barred by the doctrine of laches.

***Sixth Affirmative Defense – Lack of Rights***

23. Opposer does not have trademark rights in HINT.

***Seventh Affirmative Defense – Third Party Use***

24. Opposer's rights, if any, to the trademark HINT are weakened by the third party use, including but not limited to:

<b><u>Mark</u></b>	<b><u>Register</u></b>	<b><u>Class</u></b>	<b><u>Reg. No.</u></b>
MAYALAND COFFEE AZUL SWEET, BALANCED WITH HINTS OF TROPICAL FRUIT MEDIUM ROAST WHOLE BEAN MAYALAND COFFEE	Federal	30	4,359,879
HINT OF LACE	Federal	25	4,007,661
HINT OF SALT	Federal	30	3,880,392
GET THE HINT	Federal	18, 25	4,183,495
BAILEYS WITH A HINT OF MINT CHOCOLATE IRISH CREAM R A BAILEY	Federal	33	3,429,423
BAILEYS WITH A HINT OF CARAMEL IRISH	Federal	33	3,429,424

<u>Mark</u>	<u>Register</u>	<u>Class</u>	<u>Reg. No.</u>
CREAM R A BAILEY			
HINT OF SKIN	Federal	25	3,134,345
HINT MINT	Federal	30	2,470,558
HINT OF ORANGE	Federal	30	2,083,543
HINT OF MINT	Federal	30	1,516,590
PORTLAND BREWING 1339 OREGON HONEY BEER BREWED WITH REAL HONEY BLONDISH GOLD AND LIGHT BODIED, OHB OFFERS A HINT OF HONEY FLAVOR WITH A CRISP, DRY FINISH	State (Oregon)	32	100,261

Applicant will identify other third party HINT marks for goods in Class 18 or for goods and services related thereto in discovery.

***Eighth Affirmative Defense – Restricted Identification of Goods***

25. Applicant's identification of goods is restricted in that the recited goods are "sold through the retail outlet Vanity", negating any likelihood of confusion.

WHEREFORE, Applicant respectfully requests that the Opposition be dismissed with prejudice, and that the prayer for relief contained therein be denied.

Respectfully submitted,

Dated: November 15, 2013

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\_\_\_\_\_  
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SMRH:412845804.1

# EXHIBIT B

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Dated: ~~October 28~~ November 15, 2013

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SMRH:411634476.2  
SMRH:412845804.1

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Include Field Codes	Word	True
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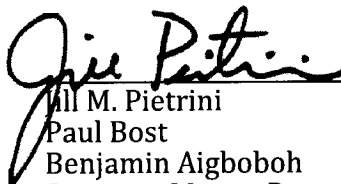
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